IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3829 OF 2006

M/s. Achala Resorts Pvt. Ltd. ..Petitioner.
Vs.
Mrs. Pansy William Ellis,
deceased through her L.Rs.
Mrs. Alice Barrow & Ors. ..Respondents.

...

Mr. Madhav Jamdar for the Petitioner.

CORAM: DR. D.Y. CHANDRACHUD, J.
14th June, 2006.

P.C. :

1. A suit for eviction was filed against the Respondents in 1992 on the ground of arrears, breach of tenancy, subletting and nuisance, after the Petitioner acquired the premises in 1986. The suit was dismissed by the Trial Court and that order was confirmed by dismissing the appeal. On behalf of the Petitioner, the submission which has been urged is that the ground of subletting was duly established in as much as the tenant Mrs. Pansy William Ellis by her last will and testament executed on 16th August, 1995 bequeathed the property to her younger daughter Mrs. Alice Barrow. The submission is that tenanted property cannot be transmitted by testamentary disposition and the act of the tenant would give rise to a ground for eviction under Section 13(1)(e) in as

much as the tenant must be regarded as having assigned or transferred her interest in 'any other manner' as contemplated by the statute.

2. The will executed by the widow of the original tenant states that her younger daughter Mrs. Alice Barrow had resided together with her right from the beginning. Even after her marriage, the daughter together with her husband and two children continued to reside with the testatrix. The will provided that she had taken care of her mother and looked after her needs and daily requirements. All that the will provides is that upon the death of the testatrix Alice and her family should continue to occupy the premises, without the other two children interfering with her enjoyment thereof. The will then provides as follows :

> "I make it clear herewith that the current dispute with the landlord pending in the Court of Small Causes, Pune, may continue even after my death, or it may end amicably with a compromise in which certain settlement clauses may result in my behalf as benefits and which benefits I declare shall be given exclusively to my daughter Mrs. Alice Barrow who is entitled to her own benefits in the said issue. So whatever I am to receive from any source in the form of alternate accommodation or money, must be directly handed over to Mrs. Alice Barrow for her to collect and use as per discretion. Not only is she fully aware of the litigation because she has been representing me on my behalf, but she is also

locally available to do what is best and expedient."

3. The Additional District Judge in the course of his appellate judgment has considered the clauses of the will and the surrounding circumstances. The daughter of the testatrix deposed in evidence. Her evidence was to the effect that she was married in 1991. She stated that she had never stayed at the house of her husband. At the time of her marriage, her husband was a school teacher. He resigned his job and went to serve in a Gulf country. He served there from 1984 for 16 years. The witness stated that she had never resided in the Gulf; that she herself was serving as a D.T.P. operator in the Maharashtra Herald Newspaper. She deposed that on her passport the address of the mother's house was shown and similarly the ration card also contained the same address. The consistent evidence, therefore, was to the effect that the daughter of the testatrix together with her family had resided with her all along. The construction which has been placed by both the Courts below on the will does not suffer from any infirmity. The will cannot possibly be regarded as having bequeathed the tenancy rights in the premises since that would be in fact prohibited by law. All that the will recites is a statement of fact that

Alice, the younger daughter of the testatrix, had all along resided with her even after her marriage together with her family in the suit premises together with a statement that she would continue to do so after her death. The latter part of the will notes that there were disputes pending with the landlord in the Court of Small Causes at Pune and that if those disputes end in a settlement, the benefit of the said settlement would enure to Alice, the younger daughter. Under these circumstances, it cannot possibly be urged that there was any transmission of the rights of tenancy by a testamentary disposition. Section 5(11)(c) of the Rent Act recognizes the devolution of the tenancy on a member of the family of the tenant residing at the time of his death.

4. In these circumstances, the judgments of the Court below do not suffer from any infirmity. No other submission has been urged. The interference of this Court under Article 227 is not warranted. The Petition is dismissed.